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Van Brunt dissenting on the ground that this is a momentous departure from precedent to give custody of children to the guilty party; that her divorce being not only void from want of jurisdiction, but inherently fraudulent; and that her home is thus not a proper place for the children. The dissenting opinion agrees with *McGown v. McGown*, 19 N. Y. App. Div. 368, the facts of which are the same. Generally, a mother, guilty of adultery, is not a fit custodian for her children (see cases cited, *Am. Eng. Ency. of Law*, 2d ed., 9-689).

The custody of children is given to the mother who has been guilty of adultery in *Com. v. Addicks and wife*, 5 Binn (Pa.) 520, and *Haskell v. Haskell*, 152 Mass. 26.

ENTRAPMENT—PUBLIC POLICY—WALTON v. CITY OF CANON CITY, 59 Pac Rep. 841 (Colo.).—*Held*, where a city marshal instigated a third party to procure the violation of a liquor law, public policy would not permit the collection of the penalty. The marshal's duty was to discover such violation.

But where a detective, without orders from the prosecuting attorney, procures a similar violation, it was held to be no defense. *People v. Curtis*, 54 N. W. Rep. 767 (Mich.).

ESTATES—DEVISE UPON CONDITION—VALIDITY—WRIGHT ET AL. v. MAYER, 62 N. Y. Sup. 610.—Plaintiff, while living separate from her husband, took land under a devise which provided that, if they should resume their marital relations, the estate so devised should cease and become vested in the testator's executors in trust to pay the income to the wife for life, and on her death to pay the principal to her children. *Held*, that the condition was valid.

This condition is considered valid by a divided court, on the authority of *Cooper v. Remsen*, 5 Johns Ch. 459. This seems to be correct, for while it is well settled that conditions annexed to a gift, the tendency of which is to induce husband and wife to separate or be divorced, are held void on the ground of public policy, even *Whiton v. Snyder*, 54 Hun. 552, which is here quoted against the validity of the condition, says "a provision for destitute wife might be humane" and valid.

HABEAS CORPUS—PRISONER HELD BY EXTRADITION WARRANT—FUGITIVE FROM JUSTICE—IN RE TOD, 81 N. W. 637 (S. D.).—Application for a writ of habeas corpus, the petitioner being held under an extradition warrant. On the hearing it was clearly shown, that the prisoner had come to South Dakota from Nebraska at the request of the party he had defrauded, that proceedings were instituted against him in Nebraska by the injured party, in pursuance of which the petitioner was held under an extradition warrant. *Held*, that the petitioner was not a fugitive from justice, and that he should be discharged from custody.

The motives that induce the withdrawal from the State are immaterial, where a person who has committed a crime departs without awaiting its results. (*In re White*, 55 Fed. Rep. 54; *State v. Richter*, 37 Minn. 436). But the mere fact that the accused left the State is not enough of itself to make him a fugitive from justice. All the circumstances in relation to the commission of the offense, the time and manner of leaving the State, should be inquired into. (*Amer. and Eng. Ency. of Law* (new ed.), Vol. 12, p. 602; Opinion of Governor Fairfield in case of *Certain Fugitives* (Me.), *Spear on Extradition* (3d ed.) 381; Opinion of Governor Collum in *Goffigan and Merrick's case*, *Spear on Extradition* (3d ed.) 385, 713.

HUSBAND AND WIFE—ACTION FOR ALIENATING HUSBAND'S AFFECTION—CROCKER v. CROCKER, 96 Fed. 702.—Action by a wife for the alienation of her husband's affection. No charge was made in the declaration of criminal conversation. *Held*, that a wife cannot, under the laws of Massachusetts, maintain an action against a third person for merely alienating the affection of her husband.